IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL NO. 11 OF 2000

IN

CLB PETITION NO. 30 OF 1999

In the matter of Companies Act, 1956.

Shree Shanti Textile Mills Pvt. Ltd., .. Appellant.

vs.

Siddharth N. Shah. .. Respondent.

Mr. Shyam Divan i/by Dhru & Co. for the appellants.

Ms. Rajani Iyer with Ms. Panchmotia i/by Gagrat Co. for Respondent.

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CORAM : S.U. KAMDAR, J.

DATE : 10TH MARCH, 2005.

ORAL JUDGMENT :

1. The present appeal is filed under section 10-F of the Companies Act, 1956 challenging the

order and judgment passed by the Company Law Board. Though various questions are framed in the appeal, the learned counsel for the appellant has pressed the following three questions of law for my consideration:-

(i) Whether in the event of there being a conflict between the statutory records maintained by the Company and the returns filed before the Registrar of Companies, the entries in the statutory registers maintained by the Company would prevail over the conflicting returns filed with the Registrar of Companies;

(ii) Whether there could not have been a valid gift in the eyes of law of 1,290 equity shares or any other shares by the owner thereof, merely by signing a transfer deed in respect thereof without actually handing over the relevant share certificates in respect of the gifted shares;

(iii) Whether the first joint shareholder, in the case of joint shareholding, could not transfer the said joint

shares by gifting away the same without the consent or concurrence of the second joint shareholder.

2. Some of the brief facts which are relevant for the purpose of determination of the issues raised in the present case can be summarised as under :-

3. The appellant, namely, Shree Shanti Textile Mills Private Limited is a private limited company and is closely held by the family members of one Nyalchand R. Shah (since deceased). The company is incorporated and registered in the year 1959. Originally there were three share holders of the company holding 25 shares each. Sometime thereafter 450 further shares were issued to the said original three share holders in proportion of 150 shares each. On 8.6.1972, 10 shares were transferred to Mrs. Kamla Shah, 10 shares were transferred to Mr. Ramesh Shah and five shares were transferred to Mr. Siddharth Shah. This transfer of 25 shares was from the shares which were held originally by Nyalchand Shah. On 8.6.1972 Mrs. Kamla Shah and Mr. Ramesh Shah were appointed Directors of the said company. On 10.6.1972, 175 shares were transferred to Mrs. Kamla Shah from the share holding of one Mr. Pramod Shah. On 29.12.1972, 475 new shares were allotted

to Mrs. Kamla Shah and Return of Allotment was filed with the Registrar of Companies. The said return has been duly signed by the then Director Mr. Nyalchand Shah (since deceased). On 12.1.1973, Form No. 2 was filed with the Registrar of Companies in respect of the 475 shares which were transferred in favour of Mrs. Kamla Shah. On 7.7.1976, 150 shares were transferred to Mr. Siddharth Shah from the account of his father Nyalchand Shah, (since deceased). Further, 1000 new shares were allotted to Mrs. Kamla Shah on 10.1.1978 and necessary return of allotment as required under the provisions of the Companies Act, 1956 was filed with the Registrar of Companies. The said return of allotment filed in 1978 has been duly signed by Mr. Ramesh Shah. Some time in or about 1993 further 75 shares were sold by Mrs. Kamla Shah to Ojas Shah, 25 shares to Manali Shah and further 25 shares to Shradha Shah. On 12.4.94, 155 shares were sold by Mrs. Kamla Shah to Mrs. Priti Shah. On 6.8.1994, one Mr. Ojas Shah, son of Ramesh Shah, was appointed director of the said company. From 1994 to 1998, various annual returns were filed with the Registrar of Companies duly signed by Ramesh Shah, Sidharth Shah and Ojas Shah. Thus, as on March 1999 the share holding in the appellant company was as under :-

Sr.	Name	No. of shares.

1.	Kamla Shah & Ramesh Shah	1380
2.	Ramesh Shah & Neela Shah	135
3.	Neela Shah & Ramesh Shah	50
4.	Ojas Shah & Manali Shah	75
5.	Manali Shah & Ojas Shah	25
6.	Shrida Shah & Ojas Shah	25
7.	Siddharth Shah	155
8.	Priti Shah & Siddharth Shah	155

4. On 15.2.1999, Mrs. Kamla Shah (since deceased) addressed a Regd. A.D. letter to the company asking for copies of the original share certificates which were yet not delivered by the company to Mrs. Kamla Shah. In the alternative she demanded the issuance of duplicate share certificates to her in respect of her holding in the said appellant company. It is not in dispute that the said letter was duly received by the company on 18.2.1999 and that the company gave no reply to the said letter.

5. On 18-2-1999 Kamla Shah gifted her 1290 shares to Sidharth Shah. She executed the necessary transfer deed which is witnessed by family doctor and attested by Notary. On 24.2.1999 Kamla Shah signed a letter recording the gift of 1290 shares in favour of Sidharth Shah. On 3.3.1999, Kamla Shah sent a registered A.D. letter along with transfer deed with an affidavit and covering letter stating

that she has gifted 1290 shares in favour of Mr. Sidharth Shah. Along with the said letter she also lodged the necessary transfer deed duly executed with the company on 5.3.1999. The company received the said letter dated 3.3.1999 but sent no reply. On 14.3.1999, Kamla Shah expired. It is the case of the appellant company that the said transfer lodged by Kamla Shah during her life time were rejected by the appellant company due to defects therein and such rejection was orally communicated by the company to the respondent no. 1 herein who was a director at that point of time. However, it is disputed by the respondent no. 1 that any such decision was taken by the company refusing to transfer the said shares. On 5.7.1999, an application was made by Ramesh Shah who is one of the directors of the appellant company for deletion of the name of Kamla Shah in respect of her holding of 1380 equity shares since according to him the said shares were held by Kamla Shah jointly with Ramesh Shah. Thus, according to Mr. Ramesh Shah on expiry of Kamla Shah who was the first holder of the shares, Ramesh Shah has become the sole holder in respect of the said shares and was therefore entitled to apply for deletion of her name. On 12.7.1999, the respondent herein filed a petition before the Company Law Board under Section 111 of the Companies Act, 1956, inter alia, seeking rectification of the Register of Members and seeking

that the name of the respondent should be brought as members in respect of the shares held by Kamla Shah being 1290 shares which have been gifted by her to the respondent herein. It is the case of the appellants that on 28.7.1999, a meeting of the Board of Directors was held and a decision was taken to delete the name of Kamla Shah from said 1380 equity shares which were held by Kamla Shah since she had expired. It is also the case of the appellant that since the said shares were held jointly, on deletion of the name of Kamla Shah, Ramesh Shah became the sole holder of the said shares and therefore he is entitled to the said shares. It is the case of the respondent on the other hand, that in respect of the said Board meeting no notice was served on the respondent though admittedly he was a Director at that point of time. It is an admitted position before me that the share certificates were never issued to any of the shareholders of the appellant company all throughout and even today the said share certificates are in the custody of the company themselves. It is also admitted position before me that one of the Directors has signed the said share certificates only on 6.8.1999 though it is the purported case of the respondent that the share certificates were prepared in 1992.

6. In the aforesaid facts of the case, a proceeding was initiated under Section 111 of the

Companies Act, 1956on 12.7.1999 and the said proceedings were contested before the Company Law Board by the parties. On 16.8.1999, the Company filed a reply to the said petition preferred by the respondent herein and ultimately by an order and judgment dated 16.6.2000, the Company Law Board has allowed the appeal and directed the company to rectify the Register of Members and declare that the respondent is lawfully entitled to the said 1290 shares which were executed in her favour and the company was bound and liable to transfer the same in favour of the respondent herein.

7. The Company Law Board by the impugned order has held that the company is bound and liable to transfer the said shares as Kamla Shah was the sole holder of said 1290 shares and not joint holder with Ramesh Shah. Secondly, it has been held that there is a valid gift in favour of the respondent from the deceased Kamla Shah and thirdly it has been held that there has been valid application for transfer and the company was bound to transfer the said shares in favour of respondent. Accordingly the Company Law Board has by impugned order directed the company to rectify the Register of Members and transfer 1290 shares belonging to the deceased Mrs. Kamla Shah to the name of the respondent and deliver the same within one month from the date of the said order.

8. It is this order which is the subject matter of appeal before me and the learned counsel appearing for the appellant under Section 10F of the Companies Act has raised the aforesaid substantial questions of law which are set out hereinabove.

9. In support of the aforesaid questions of law, the learned counsel for the appellant has raised the following contentions. Firstly, it has been contended that Kamla Shah was never single holder of the said shares and, therefore, the application for transfer by respondent no. 1 on the basis of the document of transfer executed by Kamla Shah alone was not valid and legal. It has been further contended that on the death of Kamla Shah, the shares and the properties in the said shares stood vested in Ramesh Shah as a joint holder and no third party is entitled to the said 1290 shares. It has been contended in support of the aforesaid contention that in view of the joint holding of the shares, the gift in favour of the respondent herein is invalid and without any merit. It has been further contended that in any event, the document of gift not being registered nor accompanied by a delivery of the moveable property in the shares in the present case there is no valid gift in the eyes of law and, therefore, the respondent is not entitled to the said 1290 equity shares. It has

been further contended by the learned counsel for the appellant that the document of transfer was not duly stamped in as much as the said stamps which were affixed on the transfer deed were not cancelled and, therefore, there is a breach and infraction of Section 108 of the Companies Act, 1956 and consequently the question of transfer of shares does not arise and, therefore, the provisions of Section 111 are not attracted. It has been contended that for the purpose of attracting the provisions of section 111, valid document of transfer is necessary for the purpose of the company to act thereupon and in the absence of such valid document, the transfer is invalid in law and, therefore, the company was not bound to register the shares. It has been also contended by the learned counsel for the appellants that the Tribunal has clearly erred in law while refusing to rely upon a primary document i.e. Register of Members for establishing whether Kamla Shah was a single holder or a joint holder and the reliance placed by the Company Law Board on the return of allotment is invalid in law and, therefore, the said order is without jurisdiction and clearly erroneous in law and is liable to be quashed and set aside.

10. On the other hand, the learned counsel for the respondent has contended that the act on the part of the directors has been totally malafide. It

has been contended that for the purpose of exercise of power by the Company Law Board or for that matter to give direction to transfer the shares, the Company Law Board is required to see whether the refusal of the Board of Directors for transferring of the said shares is bonafide, in the interest of the company or totally malafide. It has been contended by the learned counsel for the respondent company that the acts of the Board of Directors and the conduct of the Board of Directors is totally malafide and thus requires no interference by this Court in the present appeal. It is therefore, contended that in fact there was no Board of Directors meeting held and no notice was served on the respondent herein in respect of a meeting where the application of the respondent was declined and the transfer of the shares in his favour was rejected. It has been further strenuously contended by the learned counsel or the respondent and in my view with substantial merits therein that the company in the present case has been acting in a total malafide manner and is relying upon the documents which by contemporaneous evidence can be established to be not genuine and highly suspicious. It has also been contended that the said documents are created with the sole intention of Ramesh Shah to grab the said shares in his favour and deprive the respondent of his rightful transfer of the shares by virtue of the gifting of the said shares

by the deceased Kamla Shah in his favour. It has ben contended that the present company being a private limited company and closely held company by the various shareholders, there is no necessity that strict compliance of the provisions of procedural law as now contended by the respondent should be insisted upon particularly when admittedly company itself is not complying with the various provisions of the Companies Act. Ultimately, it has been contended that the Court is required to do substantial justice in the matter by taking into consideration the overall view of the matter and cannot reject the evidence which is in favour of the respondent by hyper-technical and paediatric consideration of the technical objections which are sought to be raised.

11. Considering the rival submissions of the matter firstly it is necessary for me to consider the objection raised by the learned counsel for the appellant about the Company Law Board refusing to rely upon the Register of Members and has on the other hand relied upon the return of allotment which has been filed by the company during the period 1972-1978 indicating the allotment of shares in favour of Mrs. Kamla Shah as a sole holder. A dispute which has been strongly urged before me is whether Kamla Shah was a sole holder of 1290 shares or was the joint holder with Ramesh Shah of the said

shares as contended by the appellant herein. To consider this issue, it is necessary to point out that the transfer of the shares has been taking place in the company from time to time as mentioned hereinabove right from 1972. The allotment in favour of Kamla Shah first time was as far back as on 8.6.1972 and thereafter transfers on 10.6.1972 and 29.12.1972 and thereafter there was allotment on 10.1.1978. There are certain facts which are admitted before me and are required to be mentioned before I consider this issue, namely,

(1) Admittedly share certificates are never issued to any of the shareholders of the company and are always kept in the custody of the company. The said share certificates are even today in the custody of the company.

(2) There is no transfer recorded either on the reverse of the said certificate or by maintaining separate register of transfer of shares.

(3) There is not even a record of the minutes of the Board Meetings from time to time indicating the transfer of the shares and/or allotment of shares from time to time in favour of one party or the other. The learned counsel for the appellant has candidly admitted that there are no records of board meetings and there are no minutes for the

contemporaneous period in which the shares allotment and/or transfer is registered in the Register of Members.

(4) There is admittedly a return of allotment filed under Section 75 of the Companies Act, 1956 at the relevant period of time in 1972 and 1978 when Mrs. Kamla Shah was allotted shares and the same is in the record of Register of Companies.

(5) There is a Register of Members produced before me prepared in 1972 and has been relied upon so as to indicate that the transfer of the shares from time to time has been recorded in such Register of Members.

12. Thus, it is very clear from the conduct on the part of the company that the company is not carrying on its business and its activities in accordance with the laid down procedural requirements of the Companies Act, 1956. However it insists on strict compliance of the provisions of the law in so far as the respondent company herein is concerned. In my view, I am required to consider that when the company itself is not maintaining the records of the company in accordance with the Companies Act, 1956, can such a company insist upon others to comply with the provisions of law so as to deprive his legitimate right in respect of the said

shares. One of the requirements under Section 108 of the Companies Act is that the share certificates must accompany the transfer document. Admittedly, the company is holding the said share certificates and is not issuing the said share certificates in contravention of Section 113 of the Companies Act. In such circumstances, whether it is permissible for the company to refuse to transfer the said shares in favour of the respondent herein on the ground that the non-accompaniment of the share certificate with the transfer documents infracts the provisions of section 108 of the Companies Act, 1956 and consequently the appellant company is not bound to register such a transfer. In my opinion such an approach would in fact mean to perpetrate injustice to the respondents for breach of law committed by the appellant. In the light of the aforesaid circumstances, the learned counsel for the appellant urged before me that Company Law Board ought to have only relied upon the Register of Members for the purpose of determining whether there is a joint holding or a single holding. I am not inclined to accept the said argument for more than one reason. Firstly, I have looked into the records of the company. The record of the Company is highly unreliable. As and by way of an example the company has produced the entire book of share certificates before me. The share certificates produced are from No. 6 to 38. Admittedly the said share certificate

has been signed by the second director only on 6.8.1999. However, the said certificate is purported to have been prepared on 12.3.1992 and the first director's signature i.e. Ramesh Shah is shown as if it is put on 12.3.1992. The second signature of the director is of his son which is of 6.8.1999. Obviously, the son could not sign the document on 12.3.1992 because as on that date he was not the director of the company. He became the director of the company in 1994. Thus, his signature is shown subsequent to the point of time when he became the director. However, closely scrutinising the said share certificate, the learned counsel for the respondent pointed out that certificate no. 27 contains the date '12.3.99' in place of '12.3.1992'. It has been surprising that the certificate nos. 6 to 26 contains the date '12.3.1992'. Certificate no. 27 contains the date '12.3.1999' and once again share certificate no. 28 to 38 contains the date 12.3.1992. It obviously indicates that there has been a slip while preparing the said certificate and the year 1999 has crept in certificate no. 27 which is the year in which the said certificates are prepared for the first time. It is because in the year 1999 the disputes between brothers Ramesh Shah and respondent had started due to gift of the said by mother Mrs. Kamla Shah to the respondent herein. Of course the learned counsel has made light of it saying that this is an

error and this error should be ignored. I would have accepted the same but for the fact that the said share certificates are signed by father and son, kept in custody of the company all throughout and obviously to defeat the right of the respondent herein are prepared by adding the name of Ramesh Shah as a second holder along with Kamla Shah. It is obvious because shares are allotted to her in 1972 and 1978 the company has filed return of allotment as required under section 75 of Companies Act, 1956 and in such return of allotment they have disclosed only the name of Kamla Shah as the sole holder of the shares and not disclosed the name of second holder Ramesh Shah. The respondent has produced before the Company Law Board as well as before me the certified copy of the return of allotment which was signed and filed by deceased Nyalchand Shah in the contemporaneous period 1972 and 1978 which shows the name of Kamla Shah as the only holder of the said shares. There is no other contemporaneous evidence produced by the appellant indicating otherwise save and except the Register of Members. Now turning to the Register of Members from the look itself it is clear that almost the whole of the Register of Members is prepared at one go. This register was not produced before the Company Law Board. The Company Law Board has adversely commented on the same in the order impugned herein. Even the inspection of the said

register of members as well was not furnished to the respondent herein and when the inspection was sought only three pages of the Register of Members were given by the appellant herein. The entries in the Register of Members are in the same ink and same hand writing in substantial portion thereof. It is unbelievable that a person who has prepared the register from 1972-78 can be the same person even in 1992 and even thereafter. It is equally surprising that all the pages of the Register of Members are prepared by the same person and in the same hand writing and in the same ink. I am therefore of the opinion that the Company Law Board was right and justified in placing reliance on the independent and unchallenged evidence in the form of return of allotment and hold that Kamla Shah was the sold holder in respect of the said shares.

13. The learned counsel for the appellant has, however, contended before me that section 75 does not provide for names of both the holders as allottees should be mentioned and the company has rightly thought it fit that it required to put the name of only one holder who is the first holder and has accordingly filed the said allotment. I do not accept the contention of the learned counsel for the appellant in that behalf. Section 75 of the Companies Act, 1976 provides for names and addresses of the allottees of the shares by the company. Once

the shares are allotted even in joint names, both the persons are allottees and are required to be mentioned in the return under section 75. The document produced by the respondent is the most authenticate and contemporaneous document with time period of 1972 and 1978 when shares were allotted in favour of Kamla Shah (since deceased). In view thereof I do not find any justification for interfering with the final order of the Company Law Board when it held that the documents produced by way of return of allotment from the Registrar of Companies is believable and reliable and, therefore, and same should be accepted. However, the learned counsel for the appellant has thereafter urged that it is not open for the Company Law Board to reject the Register of Members because the Register of Members under Section 151 and 152 of the Companies Act, 1956 is a primary document on which the reliance should be placed by the Company Law Board. I am of the opinion that in the facts and circumstances of the present case, particularly the conduct on the part of the appellant company in the present case, the Company Law Board was justified in relying only upon the uncontroverted independent evidence which came from the custody of the Registrar of Companies and not from the company itself where Ramesh Shah is the interested person and in possession and custody of all the records of the company. I do not also accept the contention of

the learned counsel for the appellants that it was not open for the Company Law Board to look into the return of allotments and only the Register of Members should have been looked into for the purpose of determination of the issue whether Kamla Shah was holding the said shares solely or jointly. I find the contention of the learned counsel for the appellant without any merit. It was open for the Company Law Board to look into all the necessary evidence including the Register of Members and return of allotment for the purpose of coming to the conclusion that it was in the name of Kamla Shah as single holder and not jointly with Ramesh Shah. The issue was squarely before the Company Law Board that whether Kamla Shah was the sold holder or joint holder as contended by the rival parties. Furthermore, the conduct on the part of the appellant company not to produce the original Register of Members itself disentitles them from contending that the return of allotment is the only document which has been looked into by the Company Law Board. The Company Law Board in its order has observed that no such Register of Members was produced in original by the company before the Company Law Board. I do not find any error in such a finding. I am also not inclined to accept the proposition of law which has been propounded by the learned counsel for the appellant that the Register of Members being the primary evidence, the Company

Law Board ought to have only looked into it for the purpose of determination of the persons who are allottees or the holders of the shares and consequently the members of the said company. I am of the opinion, that the Company Law Board was right and justified in holding that the shares were held by Kamla Shah in her sole and exclusive name and not jointly with Ramesh Shah. I am further of the opinion that the reliance placed by the Company Law Board on section 610 of the Companies Act, 1956 is also well placed and justified. The provisions of section 610 are introduced basically for the reasons that the records can be produced from the Registrar of Companies to establish any case by any third party. This reliance placed on section 610 is relevant, valid and justified and the consequent finding arrived at on the basis of the said reliance is also legal, valid and justified. I, therefore, reject the contention of the learned counsel for the appellant that Kamla Shah was the joint holder with Ramesh Shah and that the Register of Members being the primary evidence is the only document which the Company Law Board should look into for the purpose of ascertainment of the aforesaid fact.

14. The next contention raised by the learned counsel for the appellant is that there has been no valid transfer in favour of the appellant herein. In support of the aforesaid contention, the learned

counsel for the appellant has also relied upon a judgment of the Supreme Court in the case of M/s. Howrah Trading Co. Ltd., vs. Commissioner of Income-tax, Central, Calcutta, reported in AIR 1959 SC 775 for contending that the words "Member" "shareholder" and "holder of share" are interchangeable words. The words "holder of a share" are equal to the word "shareholder". I do not see any relevance of the said judgment to the facts of the present case. I, therefore, reject the same.

15. This takes me to the next contention of the learned counsel for the appellants namely, that there was no valid transfer in the name of Kamla Shah as contained in section 108 of the Companies Act, 1956 and, therefore, consequently there was no valid application to effect transfer under section 111 of the Companies Act, 1956. It is further contended that for the purpose of exercising power under section 111, the company must have a duly completed transfer application for the purpose of transferring the said shares and it cannot be done unless there is a valid execution of a transfer document. The learned counsel has contended that in the present case, there was no valid application under section 108 for two reasons: (i) that the stamp affixed on the transfer document was not duly cancelled and (ii) that the application did not

accompany the original share certificate and, therefore, there was no valid application under section 108. In support of the aforesaid contention, the learned counsel has relied upon various judgments which are set out as under :-

(1) In Re Jagdish Mills Ltd., reported in AIR 1955 Bombay 79.

(2) In re Coronation Tea Co. Ltd., reported in AIR 1961 Calcutta, 528.

(3) Mathrubhumi Printing and Publishing Co. Ltd., v. Vardhaman Publishers Ltd, and others, reported in 1992 Vol. 73 Company Cases page 80.

(4) Mannalal Khetan vs. Kedar Nath Khetan and others, reported in 1977 Vol. 47 Company Cases, 185.

(5) Muniyamma and others vs. Araathi Cine Enterprises Pvt. Ltd., and others, reported in 1993, Vol. 77, Company Cases, 97.

(6) Nuddea Tea Co. Ltd., vs. Ashok Kumar Saha and others, reported in 1988, Vol. 64 Company Cases, 775.

(7) Jayanthilal Purshottamdas Patel vs.

Gordhandas Desai Private Ltd., and Another, reported in 1968, Vol.38, Company Cases, 405.

(8) Babul Choukhani v. Western India Theaters Ltd. and another, reported in AIR 1957 Calcutta 709.

By relying upon the aforesaid judgments it has been contended by the learned counsel for the appellant that in view of non-cancellation of stamp by the respondent on transfer document and because of the non-accompaniment of the share certificate with the transfer document, there is no valid application as contemplated and provided under section 108 of the Companies Act, 1956. It is, therefore, contended that in absence of a valid application fulfilling the requirement of Section 108 of the Companies Act, the was not required and/or in any way bound to grant the said application. It has been contended that non-cancellation of stamp makes the transfer document invalid as being in non-conformity with the provisions of section 108 of the Companies Act, 1956 and, therefore, there is no valid application and, thus, the order passed by the Company Law Board is liable to be set aside. Dealing with the second contention first that the transfer document should have been accompanied by share certificate and non accompaniment thereof has made the application for transfer of shares invalid. I am of the opinion

that the said contention is required to be simply rejected because the share certificates were admittedly always in the custody of the company itself and were never forwarded to the shareholders at all. In view thereof, the contention that the share certificates should have been accompanied with the transfer document is plainly speaking unsustainable. It is not open for the company to demand that the share certificate should accompany the transfer documents when they are in the custody of company itself. The contention of the learned counsel for the appellant that it was open for Kamla Shah to first apply for delivery of share certificate and collected the same and thereafter tendered the same along with the transfer document cannot be accepted. In the present case Kamla Shah did ask for share certificates and/or duplicate thereof but the company never issued the same. In my view therefore it is not open to contend by the appellant that the certificates should have accompanied the transfer application. In view thereof, the said contention is liable to be rejected.

16. Now, turning to the first contention which has been raised that the stamps are not cancelled and, therefore, transfer document is void and illegal and thus, there was no valid application under section 108 of the Companies Act, 1956 is

concerned. I am of the opinion that the said contention is also required to be rejected. It is undoubtedly true that the authorities cited by the learned counsel for the appellant do suggest that the stamp should be cancelled and in the absence of cancellation of the stamp the transfer documents are not valid under section 108 of the Companies Act, 1956 and, therefore, there is no valid application for transfer of the certificate. In my view, the aforesaid proposition of law cannot be applied in the facts of the present case because admittedly the company itself is not following the procedure in law. The company itself has not complied with the provisions of the Companies Act, 1956. In the absence of the company complying with the various provisions of the Companies Act, 1956, it is not open for the company to raise such a hyper-technical and pediatric contention that the stamps are not cancelled and, therefore, there is no valid application. In my opinion, the contention which has been raised lacks bonafides and is raised only with an intention to defeat the right of the respondent herein because the company and Ramesh Shah, the director of the company are well aware that in view of the death of Mrs. Kamla Shah the fresh transfer documents cannot be executed. In my opinion, this is not a case where by virtue of the non-cancellation of the stamp on the transfer document the right of the respondent should be

defeated and/or the proprietary rights of the respondent in the shares should be deprivated. I am of the further opinion that such a defence is basically raised with the intention and view to defeat the right of the respondent in the said shares.

17. In any event, it was open for the company to point out the defect that the stamps are not duly cancelled to the respondent herein within the prescribed period of time limit of 60 days where the respondent could have rectified the said defects. However, the respondent company has failed to show that in fact the company has pointed out the defects in the share transfer form to the respondent herein within a reasonable period of time. In view thereof, it is not open in my opinion for the respondent company to raise such contention at a belated stage and subsequent to the expiry of the said Mrs. Kamla Shah. I, therefore, reject the said contention raised by the learned counsel for the appellant pertaining to the non-compliance of section 108 by virtue of non-cancellation of the stamps affixed on the said transfer forms.

18. On the other hand, the learned counsel for the respondent has relied upon the judgment of the Apex Court in the case of Hindustan Steel Ltd., vs. M/s. Dilip Construction Co. reported in AIR 1969

SC 1238 holding that the Stamp Act being a fiscal measure enacted to secure revenue for the State, it cannot be permitted to be used as a weapon of technicality to defeat the substantial rights of the parties in respect thereof.

19. In my opinion, in light of the judgment of the Apex Court in the case of Hindustan Steel Ltd., V. M/s. Dilip Construction Co. (supra) the appellant herein cannot be allowed to use the non-cancellation of the stamp as a weapon to defeat the substantial rights of the respondent herein. I, therefore, reject the said contention of the appellant herein.

20. The last contention rased by the appellant is that there is no valid gift of the shares in favour of the respondent by the deceased Kamla Shah as the same did not accompany share certificate. It has been contended by the learned counsel for the appellant that under the provisions of the Transfer of Property Act, the gift is valid if it is of a movable property provided either it is accompanied by the delivery of the movable property or if the gift or instrument of gift is duly registered. In my opinion, the aforesaid contention is required to be straightaway rejected. In my opinion, the intention of the deceased Kamla Shah was to give a gift of the shares to the respondent herein. The

mere fact that the same was not accompanied by share certificate because the share certificates were in the custody of the appellant does not make the said gift invalid. In my opinion, in the absence of the possession of the share certificate with Kamla Shah and the same being in possession of the appellant company, a mere fact of addressing a letter to the company that the said shares are transferred by her as and by way of a gift to the respondent therein would be a valid gift because the custody of the share certificate was already in the possession of the appellant herein. Thus, addressing a letter to the company expressing intention that the said shares are given by way of a gift in favour of the respondent herein when the certificates are in the custody of the company itself would amount to deemed delivery of the certificates along with the instrument of gift and thus it is not invalid by virtue of the provisions of the Transfer of Property Act. In my opinion, it is not necessary that the movable property must accompany in physical sense along with the instrument of transfer particularly when such a movable property is not in the custody or in the possession of the donor herein. I also do not subscribe to the view which is propounded by the appellant herein that merely because the share certificate could not accompany the gift deed, the same should have been registered. In my opinion, it was appropriate and open to the deceased to execute

the gift of the movable assets without the said document being registered because under the Registration Act the same does not require to be registered. The learned counsel for the respondent has, in my opinion, rightly relied upon a judgment of the Apex Court in the case of Apex Court in the case of Vasudev Ramchandra Shelat v. Pranlal Jayanand Thaker and others, reported in AIR 1974 SC 1728 which inter alia indicates that the gift does not become invalid for non-compliance of the formalities prescribed under the Companies Act. In that case in paragraph 10 it has been held as under :-

> "10. In the case before; us, the registered document was signed by the donor as "the giver" as well as by the donee, as "the accepter" of the gift and it is attested by six witnesses. In it, the donor specified and gave particulars of the shares meant to be gifted and undertook to get the name of the donee put on to the registers of the companies concerned. The donor even said that she was, thenceforth, a trustee fork the benefit of the donee with regard to the income she may get due to the fact that her name was still entered in the registers of the companies concerned as a shareholder. The donor delivered the registered gift deed

> together with the share certificates to the donee. We think that, on these facts, the donation of the right to get share certificates made out in the name of the donee became irrevocable by registration as well as by delivery. The donation of such a right as a form of property, was shown to be complete so that noting was left to be done so far as the vesting of such a right in the donee is concerned. The actual transfers in the registers of the companies concerned were to constitute mere enforcements of this right. They were necessary to enable the donee to exercise the rights of the shareholder. The mere fact that such transfers had to be recorded in accordance with the company law did not detract from the completeness of what was donated."

21. In my opinion, the contention of the learned counsel for the appellant that the gift should have been accompanied by the share certificate even though no share certificates were issued and the same were in the custody and possession of the company is without any substance and I, therefore, reject the same. I hold that there is a valid gift in respect of the respondent herein and therefore the said shares are required to be transferred by the company in favour of the respondent herein. In

any view of the matter, I am of the opinion, that in so far as the company is concerned, it is separate legal entity and for them it is only required to be seen whether the provisions of section 108 of the Companies Act, 1956 are complied with or not. It cannot take up the issues which are in fact directly concerned or related to Ramesh Shah. Ramesh Shah is not a party to the proceedings and, therefore, it is not open for the company to challenge such a gift of the shares by Mrs. Kamla Shah since deceased in favour of the respondent herein.

22. In the aforesaid circumstances, I do not find any merit in the present appeal. I find that the contentions are raised merely with a view to defeat the rights of the respondent herein and, therefore, I dismiss the present appeal. I accordingly, answer the questions of law which are framed, namely,

(1) It is open for the Registrar of Companies to look into the statutory records and other records of the company and on overall assessment come to the conclusion and if there is any conflict among the documents then it is open for the Company Law Board to come to a proper assessment by considering the material and documents evidence both which are in custody of the company as well as documents filed by the company with the Registrar of the Companies.

(2) In so far as gift is concerned, I am of the opinion, that in view of the fact that the share certificate was in the custody of the company itself, it is not open for the company to contend that the transfer document did not accompany the said share certificate and/or deed of gift did not accompany the share certificate and, therefore, there could not have been a valid gift deed merely because the same did not accompany the share certificate. The aforesaid circumstances, would not make the gift deed in favour of the respondent invalid in law.

(3) In so far as the third question of law is concerned, I am upholding the findings of the Company Law Board that Mrs. Kamla Shah was singly holding all the said shares and, therefore, the question of law as framed that the first joint shareholder in the case of joint shareholding could not transfer the said joint shares does not arise and I accordingly decline to answer the same.

22. The appeal is disposed of accordingly. No order as to costs.

23. The learned counsel appearing for the appellants seeks stay of the order and judgment. Stay granted for a period of two weeks.